IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
***

Criminal Revision No.263 of 1996

Date of Decision: November 29th, 2007

Jarnail Singh ... Petitioner

Versus

State (U.T. Chandigarh) ... Respondent

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CORAM: HON'BLE MR. JUSTICE HARBANS LAL

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Present: Mr. K. S. Nalwa, Advocate
for the petitioner.

Mr. Hemant Bassi, Advocate
for U.T. Chandigarh.

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HARBANS LAL, J

This revision has been directed against the judgment/order dated 9th August, 1995 delivered by the Court of learned Additional Chief Judicial Magistrate, Chandigarh, whereby he convicted and sentenced the accused-petitioner to undergo rigorous imprisonment for a period of six months under Section 279 of IPC and to further undergo rigorous imprisonment for one year under Section 304-A of IPC and to pay a fine of Rs.1,000/- or in default thereof to further undergo rigorous imprisonment for three months, with a further direction that the substantive sentences shall

run concurrently, as well as judgment dated 17th April, 1996 rendered by the Court of learned Additional Sessions Judge, Chandigarh, vide which he dismissed the appeal.

Succinctly put, facts of the prosecution case are that on 4.11.1991, Gurdial Singh made statement before SI Nirmal Singh in the terms that he was employed as a Clerk with Shri A.P.S.Deol, Advocate, Panjab and Haryana High Court, Chandigarh, and on that day, he was going on his Scooter bearing registration no. CHT-7102 to the market. When he reached the turning of Sectors 9 and 10 around 3.45 P.M., he saw one Moped Luna approaching from Civil Secretariat side on its correct side. The Moped's driver gave the signal with the right hand for having a turn towards Sector 10. Meanwhile, CTU Bus bearing registration no. CH-01-5237 came from the side of Civil Secretariat being driven rashly and negligently and at a very high speed and it struck in the back of Moped. The Moped was dragged to some distance by the Bus and it struck in the front wheel of the Bus. He stopped his Scooter and found that the person driving the Moped was lying dead. The name of the Bus Driver was revealed to be Jarnail Singh. The aforementioned SI made his endorsement on the above statement and sent the same to Police Station North, Chandigarh, where on its basis, formal FIR under Sections 279/337/304-A of IPC was registered. The investigator prepared the rough site-plan of the place of recovery, despatched the dead body of Jaspal Singh for post-mortem examination, got the vehicles mechanically tested, arrested the accused and after completion of investigation, presented the challan in the Court for trial of the accused. The accused was charged under Sections 279/304-A of IPC to which he did not plead guilty and claimed trial.

To bring home guilt against the accused, the prosecution has examined Gurnam Singh, PW-1, Subhash Chander, PW-2, Gurdial Singh, PW-3, Chint Ram, PW-4, Inderpal Singh, PW-5, Thana Singh, PW-6, Dr. K.S.Rana, PW-7, SI Nirmal Singh, PW-8, Rattan Singh, PW-9 and closed its evidence.

On close of the prosecution evidence, the accused was examined under Section 313, Cr.P.C. He has come up with the plea that I was driving the Bus slowly and when I reached near the turning of Sectors 9 and 10, the driver of the Moped, all of a sudden took a turn towards Sector 10 without giving signal. He tried to turn towards Sector 10 in a short-cut way without going on the roundabout. I tried my level best to save him but he, after seeing the Bus, became perplexed and left his Moped and he himself hit the road. This accident was not the result of rash and negligent driving by him. In fact, it has been caused because of the wrong turning of the deceased by taking a short-cut and without giving any signal and that PW-Gurdial Singh, who is closely related to the deceased, was not present at all at the spot and he came after 20-25 minutes after hearing the news of the accident and the Police made him a witness intentionally being related to the deceased. He offered to lead defence evidence but without leading any evidence in defence, he closed his defence.

After hearing the learned Assistant Public Prosecutor for the State (U.T.Chandigarh) as well as learned counsel for the accused and after examining the evidence, the learned trial Court convicted and sentenced the accused, as noticed earlier.

Feeling aggrieved with the judgment/order of the learned trial Court, he preferred an appeal, which has been dismissed by the Court of

learned Additional Sessions Judge, Chandigarh.

I have heard Mr. K.S.Nalwa, learned counsel for the petitioner as well as Mr. Hemant Bassi, learned counsel appearing on behalf of the Union Territory, Chandigarh.

Mr.K.S.Nalwa, Advocate, appearing on behalf of the petitioner, has urged with great vigour that as would be apparent from the judgment of the learned trial Court, the learned trial Magistrate, by selecting certain favourable patches from the oral as well as documentary evidence, tried to reconstruct a picture in favour of the prosecution. He further pressed into service that Rattan Singh, PW-9 did not lend sustenance to the prosecution case and he was declared hostile. When examined by the learned Assistant Public Prosecutor, no material favourable to the prosecution could be wrenched out and, thus, the learned trial Court was left with the testimony of only Gurdial Singh, PW-3, who under the stress of cross-examination, has deposed that, in fact, I heard noise and then I reached the spot and these words leave no scope for doubt that indeed the accident was not witnessed by him. He further pointed out that, however, taking a somersault, he again said that I had already reached the spot when the occurrence took place in my presence. This evidence trickled from his mouth is nullified by his further cross-examination. It is further pointed out that a meticulous perusal of his evidence would reveal that as a matter of fact the accident was not seen by him and he has been introduced in the story to strengthen the prosecution case. He further submitted with a good deal of force that it emanates from the evidence of Gurdial Singh as well as Rattan Singh that as a matter of fact the accident had taken place due to the negligence of the Moped driver because he took a sudden turn to the right from wrong side

i.e. from the underside of the roundabout and in these circumstances the trial Court was not justified in recording conviction. He further contended that the Court of learned Additional Sessions Judge also did not appreciate this point in the right perspective and consequently the impugned judgments are liable to be reversed.

To tide over these submissions, Mr. Hemant Bassi, learned counsel appearing on behalf of Union Territory, Chandigarh, maintained that a glance through both the judgments under challenge would reveal that the same are well reasoned and there is nothing on the record to warrant interference therein.

I have given a deep and thoughtful consideration to the rival contentions.

The petitioner has admitted the accident but he has propounded that the deceased, while driving the Moped, took a sudden turn without giving a signal by adopting short cut way by coming underside the roundabout instead of going over the roundabout, and to save him he tried his level best. The core question calling for determination herein is as to whether there is substance in this plea ? The prosecution is left with the solitary statement of Gurdial Singh, PW-3 for the obvious reason that Rattan Singh, PW was declared hostile and when he was subjected to cross-examination by learned Assistant Public Prosecutor, he did not budge even an inch from his firm stand. In other words, no material favourable to the prosecution could be elicited from his cross-examination by the learned Assistant Public Prosecutor. Gurdial Singh (sic.) under the stress of cross examination, has admitted that when his examination in chief was recorded, he saw the number of the Bus as well as the number of the Moped written

on his hand. It clearly indicates that he did not remember the number of either vehicle, rather disclosed the same in the Court by reading from his left hand. He deposed that Jaspal Singh (deceased) was living in our Mohalla and that he was known to him for the last 5-6 years and that the parents of Jaspal Singh were also known to him and that he did not get it mentioned in his statement before the Police that Jaspal Singh was known to him earlier. He has not given any reason worth the name for not disclosing this fact before the Police. This witness has testified in his cross-examination that " when I saw the Moped driver coming from the Secretariat side,he was on the left side of the road; when he reached near the roundabout, he took the turn and then he came towards his right side." He further stated that " the accident took place when he started taking turn on the roundabout." This evidence can be well construed to mean that the deceased took the turn from left side of the road towards the right side suddenly, but without looking back that the Bus was approaching from behind. The learned trial Court in paragraph 16 of the impugned judgment at page 10 has observed that " however, one fact is clear from the defence itself that the deceased gave a sudden turn to the Moped leading to sudden collision between the two vehicles which the accused did not expect. "

The above extracted evidence coupled with this observation leads to an irresistible conclusion and an inescapable inference that the deceased came to the right side from left side without noticing that the Bus has almost reached near him. In such a situation, it was beyond the control of the petitioner to avert the accident. It is the specific plea of the accused-petitioner that to avoid accident and to save the deceased, he applied emergency brake. As has surfaced in the cross-examination of ASI

Subhash Chander, Traffic Staff, U.T.Chandigarh, PW-2, if emergency brake is applied,brake pipe can burst and that in this case also brake pipe was burst near the left rear tyre due to the failure of the brake. This evidence speaks volume of the fact that the petitioner sensed that the accident was likely to take place and applied emergency brake. Ostensibly, he in a bid to save the deceased, put emergency brake into operation. Had the deceased before coming from one side to the other side of the road ensured by looking behind, as to whether any vehicle was fast approaching, the accident would have been averted. This witness ASI Subhash Chander has also admitted at the fag end of his cross-examination that there was no damage from the back side of the Moped. It imports that the Bus had not hit the Moped from behind. One should not be permitted to take advantage of one's own wrong. The deceased without giving signal, took the turn from left to right side of the road, without slightly bothering about the incoming traffic. It is also in the evidence that the deceased, instead of going over the round-abount, adopted a short-cut way underside the roundabout. Gurdial Singh, PW-3 has solemnly affirmed in his examination in chief that the accused struck the Bus on the back side of the Moped whereas ASI Subhash Chander (sic.), as noted supra, has deposed that there was no damage on the backside of the Moped. This incompatibility too makes me to believe that the accident was not witnessed by Gurdial Singh, PW. Further he has deposed that I do not know that the deceased was taken to the General Hospital by the Police as well as family members of the deceased and that I did not go along with them nor I went to the house of the deceased to inform them about the accident and that I do not know who informed the Police and that my statement was recorded in the Police Station. Had he been present

at the time of accident, his statement might have been recorded at the spot. In his chief examination, he has stated that the Police reached the spot and recorded my statement, Exh. PB. Thus, obviously, he is at variance with the place at which his statement was recorded. In his chief examination, he has stated that when I reached near the turning of Sector 9/10, then I saw that a person was coming on the Moped from the Secretariat side and the said Moped driver gave an indication for turning to right side towards Sector 10 and that the name of the deceased came to his knowledge to be Jaspal Singh though in his cross-examination he claims the deceased to be the resident of his Mohalla and that he was also known to him for the last 5-6 years. If it was so, he would have certainly got recorded in his statement that the person who was coming from the Secretariat side was Jaspal Singh. Rattan Singh, PW-9 has stated in categoric terms that the Moped driver was to take turn towards Sector 10 and he, without going over the roundabout, turned his Moped from underside the roundabout and the accident took place because of taking a sudden turn by the Moped driver. When all the circumstances are weighed with due care and caution in the scales of justice, it leads to the conclusion that the plea adopted by the accused-petitioner out-weighs the prosecution evidence.

It is not uncommon that the Scooterists, Cyclists and Motorcyclists moving on the road too often make an attempt to overtake the heavier vehicles without taking due precaution. In such process, if they get knocked down, the rashness or negligence is generally attributed to the driver of heavier vehicle even though the driver of such two wheeler was obviously at fault.

To epitomise, firstly Rattan Singh, PW did not support the

prosecution case. Secondly, the presence of Gurdial Singh, PW at the time of accident, is highly doubtful. Thirdly, the plea adopted by the accused sounds well and cuts down the fibres of the prosecution edifice. All these circumstances cumulatively go a long way in proving that the accident occurred because of the rashness and negligence of the deceased.

In the result, this Criminal Revision succeeds and is accepted, setting aside the judgments recorded by the Courts below. Sequelly, the petitioner is hereby acquitted of the charge under Section 304-A of IPC and under Section 279 of IPC by giving a benefit of reasonable doubt. The fine, if deposited by him, shall be refunded to him. His bail bonds stand discharged.

Accordingly, the revision is disposed of.

(HARBANS LAL)
JUDGE

November 29th, 2007

RS